

FIRST APPEAL NO.1705 OF 1995

Date of decision: July 5,1996

For Approval and Signature:

The Hon'ble Mr.Justice N.J.Pandya

The Hon'ble Mr.Justice A.R.Dave

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or any ..

thereunder?

5. Whether it is to be circulated to the Civil Judge?

Mr.Rajni Mehta, L.A. for the appellant
Ms.Megha Jani, L.A. for the respondents

Coram: N.J.Pandya & A.R.Dave,JJ.

July 5, 1996

ORAL JUDGMENT (Per N.J.Pandya,J.)

On the occasion of Civil Application No.4825 of 1996 for modification being filed, the party was called and with the consent of both the sides, the matter is taken up for final hearing.

2. The short question is only with regard to the assessment of disability. No doubt, the petitioner is required to move about for the life time on crutches. This happened on account of serious injuries on his right left involving tibia bone and ankle joint. There was multiple cumulative fracture and that too, fragmented. Two inches of bone had to be taken out and his right leg has therefore, become almost redundant so far as the load bearing is concerned.

3. At the same time, looking to the business that he was carrying on, namely selling snacks like Bhajiya and other eatables, it cannot be said that he cannot work at all. The learned Tribunal Judge has committed error while disposing of M.A.C.P.No.949/1990 by his judgment dated 8th March 1995 in coming to the conclusion that the entire monthly income of Rs.2,000/- assessed by him has to be taken as the basis. Dr.Parikh, whose detailed certificate of disability has been produced before the trial Court and certified copy has been shown to us, has assessed the disability of the right lower limb to be 70%. Even if we take the disability at 35% in respect of the entire body, on the basis of the said figure of Rs.2,000/-, it will work out to Rs.700/- per month. This will give the annual figure of Rs.8,400/- and keeping the multiplier, it comes to Rs.1,26,000/-. Thus the amount of Rs.3,60,000/-awarded under the head of economic loss will stand reduced to the aforesaid extent and in its place what is awarded comes to Rs.1,26,000/-. There will therefore be proportionate deduction in the cost and interest also.

3. The appeal is partly allowed. The award of the Tribunal is modified to that extent. Rest of the award of the Tribunal remains as it is.

4. As the appellant-Company has already deposited the entire amount, the excess amount deposited is ordered to be refunded to the Company. Rest of the amount to be dealt with according to the orders of the Tribunal. Stay granted earlier is vacated.
